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May 19, 2025

Hon. Ona T. Wang
 United States Magistrate Judge
 United States Courthouse
 Southern District of New York
 500 Pearl St., Courtroom 20D
 New York, NY 10007-1312

Re: *Make the Road New York, et al. v. Ur Jaddou, et al.*, No. 19-cv-7993 (GBD)(OTW);
Make the Road New York, et al. v. Blinken, No. 19-cv-11633 (GBD)(OTW)

Dear Judge Wang:

Plaintiffs in the two above-referenced related cases seek leave to file a consolidated motion regarding attorneys' fees. Both cases are presently before this Court for separate fee determinations following recommittal orders by Judge Daniels. The outcome of both fee motions depends on the impact of the Supreme Court's recent opinion in *Lackey v. Stinnie*, 604 U.S. __, 145 S. Ct. 659 (Feb. 25, 2025), regarding the definition of prevailing party status.

As background, Plaintiffs in *Make the Road New York, et al. v. Blinken*, No. 19-cv-11633 (GBD)(OTW) ("Blinken") filed their initial fee petition on February 27, 2024 under the Equal Access to Justice Act (EAJA) (Blinken ECF No. 155). This Court granted the motion in a Report & Recommendation on September 4, 2024, awarding Plaintiffs \$376,447.58 (Blinken ECF No. 172). Defendants then filed an Objection, seeking review by Judge Daniels (Blinken ECF No. 174). Following the grant of certiorari by the Supreme Court in *Lackey v. Stinnie*, No. 23-621 (Nov. 20, 2023), Judge Daniels "recommitted the motion for attorneys' fees" in Blinken to this Court pending the outcome of the Supreme Court's decision. *Make the Road New York, et al. v. Blinken*, 2024 WL 4350828 (S.D.N.Y. Sept. 30, 2024) (Blinken ECF No. 175). On February 26, 2025, Defendants filed a letter advising this Court of the issuance of the Supreme Court's decision in *Lackey*, 604 U.S. __, 145 S. Ct. 659 (Feb. 25, 2025), and requesting denial of Plaintiffs' fee motion (Blinken ECF No. 184).

Plaintiffs in *Make the Road New York, et al. v. Ur Jaddou, et al.*, No. 19-cv-7993 (GBD)(OTW) ("Jaddou") filed a fee petition on March 1, 2024 (Jaddou ECF No. 362), and all briefing from both sides has been completed. This Court has not yet ruled on the Jaddou Plaintiffs' motion. Judge Daniels recently ordered: "For purposes of analyzing any impact of *Lackey* on Plaintiffs' eligibility for attorneys' fees, this Court similarly recommits the motion for attorneys' fees in this related case [Jaddou] to Magistrate Judge Wang for renewed review and reconsideration," and directed that the open motions (Jaddou ECF Nos. 361, 376) be closed. (Jaddou ECF No. 379).

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Upon careful analysis, Plaintiffs have determined that the legal context of both *Blinken* and *Jaddou* is materially distinguishable from *Lackey*, so that the Supreme Court opinion should not prevent Plaintiffs from being deemed prevailing parties. The most efficient next step in the fees litigation of *Blinken* and *Jaddou*, therefore, is for the parties and this Court to address the single common question of whether *Lackey* is controlling. A decision in Plaintiffs' favor would result in reaffirmance of this Court's ruling in *Blinken*, and the grant of a renewed motion before this Court on the remaining issues in *Jaddou*.

Plaintiffs presented the consolidated motion plan outlined above to Defendants' counsel of record initially on April 2, 2025, and, having received no response, again on April 23. Defendants' counsel, Olivia Hussey Scott, responded on May 13 that "Defendants oppose consolidated briefing in the two cases," with no further explanation or discussion.

Therefore, Plaintiffs ask the Court, with good cause appearing, to grant leave for the filing of a consolidated motion, with the opening brief to be filed within 21 days of the order granting leave, opposition within 14 days thereafter, and an optional reply within 7 days following the opposition.

Respectfully submitted,

/s/

Samuel Miller

cc: All counsel of record via ECF